IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.2757 OF 1993

V. Ananthanarayan .. Plaintiff

Versus

Shree Mansingka Oil Mills Ltd. .. Defendants

Mr.V. Ananthanarayan - plaintiff - in person present.

None for the defendants.

CORAM : S.K. SHAH, J.

DATED : 7.7.2005.

P.C.-

1. This is a suit filed by the Plaintiff, who was the employee of the defendant / firm. The plaintiff alleges that the amount of Rs.1,69,835/- has not been paid to him on account of salary, increments, leave travel allowance, Earned Leave Salary, bonus and reimbursement of conveyance expenses, telephone and medical expenses and convention of Company Secretaries etc. The plaintiff further alleges that the defendant - company was declared as 'Sick Unit' from February, 1989 and at the hearing of B.I.F.R. held on 28th November, 1991 at New Delhi. It was made clear that the defendants had not fulfilled their commitment to the B.I.F.R.

i.e. to say depositing Promoters Contribution of Rs.97.00 lakhs, there would be no option except to declare that the Company has gone into Liquidation. He further alleges that the aforesaid dues were not paid to him inspite of intervention of the advocates.

2. Defendant had filed written statement on 4th November, 1996 contending therein that the suit is bad by period of limitation. That the suit is false and frivolous. They deny that the Plaintiff was in continuous employee of the defendant from September, 1985 to 30th September, 1990 as their company Secretary and he is entitled to receive the aforesaid amounts on the count of different dues. They deny that a meeting was held at the chamber of the Solicitor Shri. D.B. Dhruv on 2nd August, 1990 and the decision was arrived at in respect of the dues payable to the plaintiff. They deny that there is intervention by any advocate for settlement of the dues.

3. On the basis of the pleading above, following issues are framed and I have recorded my findings thereon for the reasons given hereinbelow.

	ISSUES	FINDINGS
1.	Whether the Plaintiff proves that he is entitled to Claim from defendants a sum of Rs. 1,69,835/- plus interest at Rs.81,865/- thus aggregating to Rs. 2,51,700/- as per letter dated 31.8.1990, which is Exhibit -A to the Plaint ?	**PLAINTIFF IS ENTITLED TO THE SUM OF RS.93,750/- WITH INTEREST THEREON @ RS.9% P.A.**

2.	Whether the Plaintiff proves that the minutes dated 9th April, 1991, being Exhibit - B to the plaint, is binding on the defendants, basing on which the plaintiff is entitled for the above claim as per clause I above?	**DOES NOT SURVIVE**
3.	Whether the plaintiff proves that the suit is filed within the period of limitation?	**SUIT IS PARTLY WITHIN LIMITATION**
4.	Whether the plaintiff proves that the Defendants have admitted their liability before B.I.F.R. on 26.8.1991 and as such still they are bound to pay up his dues?	**IN THE NEGATIVE**
5.	Whether the defendant proves that the suit is not maintainable and same is liable to be dismissed?	**IN THE NEGATIVE**
6.	What order?	

REASONING

FINDING ON ISSUE NO.1:-

4. The plaintiff has filed affidavit of documents as also the documents in support of his claim. The defendants have remained absent since last number of dates. Neither the defendants nor their advocates have appeared.

5. I have considered the affidavit of evidence filed by the Plaintiff. As regards the point of limitation, the suit has been filed on 29th April, 1993 and the claim on account of unpaid salary has been filed for the period of nine months from December, 1989 to August, 1990. The plaintiff left the

service of the defendant - company from 30th September, 1990.

Since the suit is filed on 29th April, 1993, the plaintiff would be entitled to claim salary from 29.3.1990 and will not be entitled to claim the salary for the months of December, 1989 and January to March, 1990. The plaintiff would be entitled to the salary from April, 1990 to September, 1990. On account of increments, the plaintiff has stated that the increment was Rs. 750/- per month in addition to the salary of Rs.5000/- per month, which he will be entitled to receive for six months that total amount comes to Rs.4500/-. On account of salary for six months, the amount comes to Rs.30,000/-. On account of Leave Travel Allowance, the plaintiff has stated that he got the leave salary of only Rs.2000/- and Rs.3000/- are balance. The plaintiff would be entitled to receive Rs.3000/- on account of leave travel allowance. The plaintiff has stated that he has not encashed the Earned Leave at any time. The Plaintiff has claimed Rs.25000/- plus Rs.7500/- on account of increments. The Plaintiff has stated that five months Earned Leave was at his credit and, therefore, he is entitled to Earned Leave Salary of said period. The Plaintiff is entitled to receive that amount.

6. The Plaintiff has claimed Bonus for the years 1987-88, 1988-89, 1989-90 and 1990-91. However, the plaintiff is not

entitled to the bonus for the years, 1987-88, 1988-99. The plaintiff would be payable to the bonus for the year 1989-90 and 1990-91 that is Rs.5000/- Rs.2500/- respectively and the total amount comes to Rs.7500/-.

7. The Plaintiff has claimed reimbursement of conveyance expenses, telephone and medical expenses and convention of Company Secretaries etc. till the end of July, 1990. However, the Plaintiff, has not given any details thereof. Therefore, he is not entitled to receive the said claim.

8. The next claim made of Rs.12500/- on account of gratuity. The Plaintiff will be entitled to receive that amount as also Rs. 3750/- on account of increment. The total amount comes to Rs.16250.

9. Thus, the Plaintiff would be entitled to receive the total sum of Rs.93,750/- [Rupees Ninety three thousand seven hundred fifty only] towards all the dues and he will be entitled to receive interest thereon at the rate of 9% per annum from 1st May, 1990 and not at the rate of 18% per annum as claimed by the Plaintiff.

10. Although the defendants have denied that the Plaintiff was never in their service, the fact that the plaintiff was

in the service of the defendants has been established by his own affidavit. Therefore, he is entitled to the aforesaid amount.

FINDING ON ISSUE NO.2:-

11. This issue does not survive as no documents or evidence is produced on record.

FINDING ON ISSUE NO. 3 :-

12. This issue has already been considered as above as the suit is partly within limitation.

FINDING ON ISSUE NO. 4:-

13. No documentary is produced. Therefore, this issue is answered in the negative.

FINDING ON ISSUE NO. 5:-

14. There is no evidence led by the defendants to show as to how the suit is not maintainable. This issue is, however, answered in the negative.

FINDING ON ISSUE NO.6:-

15. In view of my findings on the issue Nos. 1 to 5 as above, I proceed to pass the following order :

ORDER

1. The suit is partly decreed.

2. The defendants shall pay to the Plaintiff Rs.93750/- [Rupees Ninety three thousand seven hundred fifty only] with interest thereon at the rate of 9% per annum from 1st May, 1990 till filing of the suit and from the date of filing of the suit till realisation of the full amount.

3. The defendants also shall pay to the Plaintiff the cost of the suit and shall bear their own cost.

4. Decree be drawn accordingly.

5. Suit stands disposed of accordingly.

[S.K.SHAH, J.]